



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 5106-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 16 November 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Navy and began a period of active duty on 26 April 2003. On 4 November 2004, you received non-judicial punishment (NJP) for four specifications of unauthorized absence totaling 32 days, missing movement, and wrongful use of marijuana. As a result, on 8 November 2004, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and misconduct due to drug abuse. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy

with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 25 February 2005, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to change your discharge character and contention that you incurred depression during military service due to the stresses of your duties, which contributed to your misconduct. You assert that you were dealing with depression and the medical personal failed to treat you with the proper medication and treatment, and this led to you self-medicating which resulted in your current discharge. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 9 September 2022. The AO noted in pertinent part:

There is no evidence that she was diagnosed with a health condition during military service, or that she exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. She has provided no medical evidence of a mental health condition. Unfortunately, her personal statement is not sufficiently detailed to establish clinical symptoms or a nexus with her misconduct, as there is no evidence her experience of military stressors was unusual or unique. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence her misconduct could be attributed to a mental health condition."

In response to the AO, you provided additional medical evidence regarding the circumstances of your case. As a result, the AO was revised and stated:

This Advisory Opinion (AO) Rebuttal Response, like the previous AO, reference (a), will only address the mental health claims by Petitioner. The Petitioner has provided some evidence in support of her claims of depression incurred during military service. Records indicate she has been fairly consistent in reporting to her civilian providers from 2015 onward that her depression symptoms onset during military service and her in-service marijuana use was to seek discharge. This report to her providers is temporally remote from her military service. Her in-service medical record is not available for review to support her contention she was prescribed antidepressant medication during military service. While it is possible that an onset of depression symptoms might have reduced her motivation to remain

in service, it is difficult to attribute her misconduct, including UA, missed movement, and regular marijuana use, to depression symptoms, particularly as marijuana can have depressant effects.

The revised AO concluded, "it is my considered clinical opinion that there is some post-service evidence of a mental health condition (depression) that may be attributed to military service. There is insufficient evidence her misconduct could be attributed to mental health symptoms."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. Additionally, the Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that while there is post service evidence of a mental health condition (depression) that may be attributed to military service, there is insufficient evidence your misconduct could be attributed to mental health symptoms. The Board noted that you provided no evidence to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board empathized with your current medical condition, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/4/2022

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